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10/518,262	12/16/2004	Wolfgang Johannes Obermann	AT 020039	8325

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P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER	
ALIE, GHASSEM	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WOLFGANG JOHANNES OBERMANN

Appeal 2009-008391
Application 10/518,262
Technology Center 3700

Before JOHN C. KERINS, KEN B. BARRETT, and FRED A. SILVERBERG, *Administrative Patent Judges*.

BARRETT, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Wolfgang Johannes Obermann (Appellant) seeks our review under 35 U.S.C. § 134 of the final rejection of claims 1-6 and 21. Claims 7-20 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

THE INVENTION

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. Hair-cutting apparatus, comprising:

a cutting arrangement for cutting hair and means for counter-acting flying off cut hair from the hair-cutting apparatus, which means comprising a boundary wall, which extends close to the cutting arrangement and further comprises a stationary portion and a portion that is movable relative to the stationary portion, the movable portion being arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of the hair.

THE REJECTIONS

The following Examiner's rejections are before us for review:

1. Claims 1, 2, 5, 6, and 21 are rejected under 35 U.S.C. § 102(b) as being anticipated by Severson (US 1,506,139, issued Aug. 26, 1924);

2. Claims 1-3, 5, and 6 are rejected under 35 U.S.C. § 102(b) as being anticipated by Zucker (US 3,302,286, issued Feb. 7, 1967);

3. Claims 3 and 4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Severson and Marchetti (US 4,074,427, issued Feb. 21, 1978); and

4. Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Zucker.

Appellant also seeks review of the Examiner's objection to the drawings for using the same number to designate two components, the Examiner's objection to the Specification because of informalities, and the Examiner's objection to the Abstract. App. Br. 4-5; Final Rej. at 2-4. These matters are unrelated to the rejections before us on appeal and are reviewable by petition under 37 C.F.R. § 1.181 (*see Manual of Patent Examining Procedure* (MPEP) §§ 1002 and 1201) and are thus not within the jurisdiction of the Board. *In re Mindick*, 371 F.2d 892, 894 (CCPA 1967).

OPINION

The rejection of claims 1, 2, 5, 6, and 21 as being anticipated by Severson

Appellant argues the rejected claims as a group. App. Br. 6-7, 8. We select claim 1 as the representative claim, and claims 2, 5, 6, and 21 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

Claim 1 recites: "the movable portion being arranged and positioned to cooperate with the hair to be cut dependent on the nature and condition of the hair." The Examiner found that Severson's spring-biased hood guard or shield 37 satisfies this limitation. Ans. 3; Severson 2, ll. 53, 68-70, 90-94. Appellant's arguments to the contrary appear to be premised on the assertion that Severson does not disclose adjustability specifically dependent on the nature and condition of the hair. App. Br. 7; Reply Br. 3.

The "movable portion" feature is recited functionally, and merely requires that portion to be arranged and positioned so as to be capable of cooperating with the hair to be cut dependent on the nature and condition of the hair. *See In re Swinehart*, 439 F.2d 210, 213 (CCPA 1971). The Examiner reasonably found that Severson's hood guard has that capability. Ans. 3, 9-10. Appellant presents no persuasive argument or evidence that Severson's device lacks this capability. *Cf. In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990) ("[W]hen the PTO shows sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not."); *Swinehart*, 439 F.2d at 213. Furthermore, as Appellant's Figure 7 schematically depicts the movable portion 35 spring-biased in a direction approximately straight down onto the top of the hair to be cut, we, like the Examiner (Ans. 10), fail to see how Appellant's movable portion works differently than the prior art device in any patentably distinguishing way. *See* Spec. 5:14-23.

We affirm the rejection of claim 1 as anticipated by Severson. Claims 2, 5, 6, and 21 fall with claim 1.

The rejection of claims 1-3, 5, and 6 as being anticipated by Zucker

Appellant argues the rejected claims as a group. App. Br. 7- 8. We select claim 1 as the representative claim, and claims 2, 3, 5, and 6 stand or fall with claim 1.

Appellant's arguments regarding Zucker are the same or similar to those for Severson. *See* App. Br. 7-8. We determine that the Examiner reasonably found that Zucker's spring-biased comb plate 59 is capable of functioning as claimed by Appellant. *See* Ans. 5, 9-10 (noting that the

explanation regarding the capability of Severson's movable portion is also "true with respect to the movable portion of Zucker's hair-cutting apparatus."); Zucker, col. 3, ll. 46-64. Appellant has not shown that Zucker lacks that capability.

We sustain the rejection of claim 1, and of claims 2, 3, 5, and 6 which fall therewith, as anticipated by Zucker.

The obviousness rejections

Appellant does not offer separate arguments regarding the claims subject to the obviousness rejections, but relies on their dependency from claim 1 for patentability. App. Br. 8. Because we have sustained the rejections of claim 1, we also sustain the rejection of claims 3 and 4 as being unpatentable over Severson and Marchetti and the rejection of claim 4 as being unpatentable over Zucker.

DECISION

The decision of the Examiner to reject claims 1-6 and 21 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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